

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HENRY LEUTWYLER,

Plaintiff,

-against-

AMAZON.COM, INC. and AMAZON.COM, LLC,

Defendant.  
-----X

Civ. Action No.

10 Civ. 4910 (VM)

**COMPLAINT**

Plaintiff, by his attorneys, Joel L. Hecker, Esq. of Russo & Burke, as and for his complaint against defendants herein, alleges as follows:

**JURISDICTION**

1. This action arises under Title 17 of the United States Code, and jurisdiction is vested in this Court under 28 U.S.C. Sec. 1338. Proper venue exists under 28 U.S.C. Sec. 1400(a) in that defendants reside, do business and/or may be found in this district and certain of the transactions complained of occurred in this district.

**THE PARTIES**

2. Plaintiff was and at all relevant times herein had been a resident of the City, County and State of New York.

3. Upon information and belief, defendant, Amazon.com, Inc., is a foreign corporation which sells merchandise that it owns and manufactures, as well as merchandise owned by others, over the internet through its website www.amazon.com, on a worldwide basis, including in New York.

4. Upon information and belief, defendant, Amazon.com, LLC, is a foreign limited liability company which sells merchandise that it owns and manufactures, as well as

merchandise owned by others, over the internet through its website www.amazon.com, on a worldwide basis, including in New York.

5. Defendants are, upon information and belief, interrelated entities.

## **COUNT I**

### **COPYRIGHT INFRINGEMENT**

6. Plaintiff is and at all relevant times herein has been engaged in the business of creating professional photography.

7. Prior to commencement of this action, plaintiff caused a photograph of Anne Marie Kortright, a professional model, to be created solely for use by plaintiff's client, with plaintiff retaining copyright and all other usage rights thereto (the "Copyrighted Photograph"). The Copyrighted Photograph was and is wholly original to plaintiff and is copyrightable subject matter under the copyright laws of the United States.

8. Plaintiff, by causing the creation of the Copyrighted Photograph, thereby secured the exclusive rights granted to the author of copyrightable work under the copyright laws of the United States.

9. Since the creation of the Copyright Photograph, publication of same by plaintiff or under his authority or license has been in strict conformity with the provisions of the copyright laws.

10. Since the creation of the Copyrighted Photograph, plaintiff has been the sole proprietor of all rights, title and interest in and the copyright of said Photograph.

11. Prior to the commencement of this action, plaintiff complied in all respects with the United States Copyright Act and all other laws governing copyrights by filing the

Copyrighted Photograph with the United States Copyright Office, along with payment of the requisite fees, under Certificates of Registration Nos. VA 1-685-212.

12. Defendants, without the authorization, knowledge or consent of plaintiff, deliberately and wilfully used the Copyrighted Photograph on their website, www.amazon.com, in a video in connection with the advertising, display and sale of its proprietary reader, the Amazon Kindle. The video is titled *Amazon Kindle: A Guided Tour*. A copy of a printout of defendants' Kindle page displaying the Copyrighted Photograph, is annexed hereto as Exhibit A.

13. This use of the Copyrighted Photograph, without plaintiff's permission, authorization or consent, and in excess of those rights granted to plaintiff's original client, were deliberate infringements of plaintiff's copyright in his work.

14. Defendants thus violated plaintiff's exclusive rights in the copyright to the Copyrighted Photograph, in violation of Sections 106(2) and (5) of the Copyright Act of 1976, 17 U.S.C. Sections 106(2) and (5).

WHEREFORE, plaintiff demands judgment against defendants, jointly and severally, as follows:

(A) that defendants, their agents, servants, employees, officers, attorneys and all those persons in active concert or participation with each and any of them be enjoined during the pendency of this action and permanently, from directly or indirectly infringing the Copyrighted Photograph in any manner, and from publishing the infringing material.

(B) that defendants be required to deliver up to plaintiff to be impounded during the pendency of this action, all posters, advertisements, photographs, and all or other material infringing the Copyrighted Photograph, which are in their possession or under their

control and to deliver up for destruction any such material used in the making or publishing of such infringing matter;

(C) for an accounting of the proceeds derived by defendants from the publication of the infringing material and upon such accounting, that defendants pay to plaintiff all monies determined to be benefits generated or arising from such infringing material, and the damages which plaintiff has suffered as a result of such infringement;

(D) that defendants pay to plaintiff damages provided by statute for defendants' statutory copyright infringement;

(E) that defendants pay to plaintiff as and for exemplary damages the sum of \$100,000; and

(F) that defendants pay to plaintiff all the costs and expenses of this action, including reasonable attorneys' fees to be assessed by the Court, plus interest as appropriate, and such other and further relief as to this Court seems just and proper.

Dated: New York, New York  
June 22, 2010

Russo & Burke

By: 

Joel L. Hecker (JH 0842)  
Attorneys for Plaintiff  
600 Third Avenue  
New York, New York 10016  
(212) 557-9600

**EXHIBIT A**

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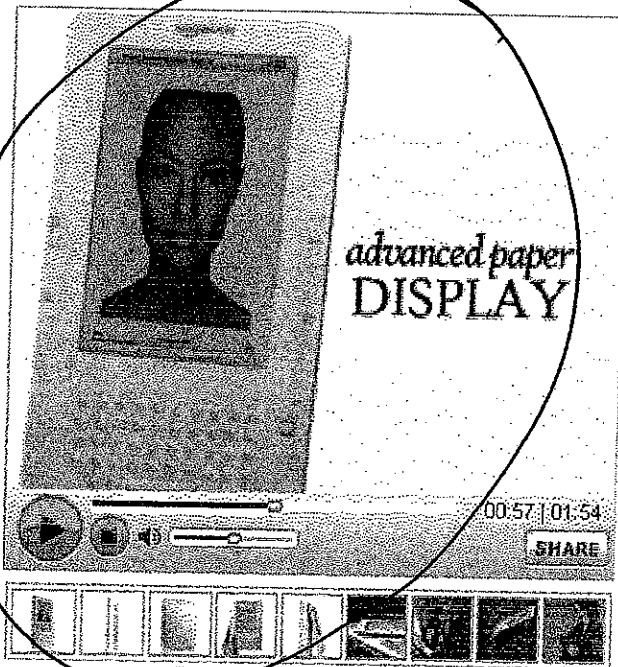
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